

Office of the Secretary
Federal Communications Commission
455 12th Street, SW Portals II Building
Washington, DC 20544

July 16, 2002

RE: Reply Comments by the Public Service Commission of the State of Missouri filed in the proceeding captioned: *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147.

Madam Secretary:

The Public Service Commission of the State of Missouri respectfully submits these comments in reply to April 5, 2002 pleadings filed in response to the to the Notice of Proposed Rulemaking (“*Notice*” or “*Triennial Review*”) issued by the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned proceedings.¹ Because of the critical impact action in this proceeding will have on existing State commission policy initiatives, we felt compelled to file and specifically endorse NARUC’s April 5, 2002 comments (1) respectfully requesting that the FCC immediately convene a § 410(b) Federal-State Joint

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) (“*Notice*”).

Conference to facilitate, inform and coordinate its implementation of the three-year UNE review and (2) assure that States retain the authority to impose additional unbundling “obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” Specifically, we endorse the following NARUC positions:

- (1) *A Joint Conference is in the Public Interest*: Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *at a minimum*, the FCC should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory “necessary” and “impair” standards.
- (2) *State Authority To Add New UNEs/Obligations*: We agree with the FCC findings that § 251(d)(3) of the 1996 Act “grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support this approach.²
- (3) *Impact of Federal Minimum List*: As recognized implicitly in the *UNE Remand Order*’s specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the FCC should defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. Assuming any new federal minimum removes one or more UNE from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor’s access is “necessary” or whether lack of access “would impair” that competitor’s ability to offer services, or is required as a matter of State rule or statute.³

We appreciate the opportunity to make our views known.

² See, *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) (“*Remand Order*”). See also NARUC’s February 2002 *Resolution Concerning the States’ Ability to Add to the National Minimum List of Network Elements* (“[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC’s national minimum.”)

³ See, *NARUC December Letter* at 2 (“[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of evidence, that the requested relief is justified.”)

Respectfully submitted,

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